

#### REMARKS

Reconsideration and withdrawal of the rejection and the allowance of all claims now pending in the above-identified patent application (i.e., Claims 18-37) are respectfully requested in view of the foregoing amendments and the following remarks.

Initially, it should again be recalled that the present invention provides a modular barrier comprising a plurality of barrier sections having male and female ends. The female end of a first barrier section interacts with the male end of an additional barrier section, so that projection(s) provided at the female end of one barrier section mate with one or more projections provided at the male end of the additional barrier. The mating of the projections at the male and female ends enable the barrier sections to securely connect with each other. A hinge pin can be used to supply extra security for preventing the barrier sections from separating in the event of a collusion or impact with the barrier.

The claimed modular barrier further comprises a nose at the female end and a cavity at the male end, which corresponds to the nose. The nose has a surface of rotation, which is a surface of the profile of the comparatively wide base portion of the barrier (as best illustrated in FIGS. 1 and 2), which corresponds to the surface of the cavity of an additional barrier, so that the nose and cavity fit together

without any gap between them.

As will be explained in greater detail hereinafter, nowhere in the prior art is such a novel and efficient modular barrier, useful for traffic and crowd control, either disclosed or suggested.

By the present amendments, Applicant has amended independent Claims 18, 25 and 34 (and all remaining claims via dependency) to clarify that the surface of the nose (28) of the barrier is a surface of rotation of the profile of the comparatively wide base portion (12), and that the surface of rotation of the barrier segments of the present invention is not merely a surface of rotation for the profile of the base of the barrier, as the applied prior art might possibly be so construed. (Applicant's Specification at Page 3, lines 1-9; and, Page 6, lines 28-29)

As detailed below, the applied art of Striefel et al., U.S. Patent No. 6,059,491, includes a series of vertically aligned bores (59) for receiving a hinge pin along the profile of the barrier disclosed therein for connecting adjacent barrier segments. The inner surfaces of the vertically aligned bore could be viewed as providing various surfaces of rotation for the profile of the barrier in Striefel et al., however, such vertically aligned bores (59) cannot reasonably be seen as part of the profile of the barrier segment, which is comprised of a series of upright endwall portions (70, 72,

74, 76), in contrast to the presently-claimed invention, in which the surfaces of rotation are, in fact, part of the profile of the comparatively wide base portions (12). This distinction, and various others, are submitted to exist between that now being claimed and what is disclosed and suggested by Striefel et al.

Prior to a detailed analysis of the applied art, Applicant's attorney hereby summarizes and memorializes the telephonic interview conducted with the Examiner of May 27, 2003, in which Applicant's counsel and the Examiner agreed that the third Office Action, which issued on May 21, 2003, following a "Request for Continued Examination," filed April 28, 2003, was not intended to be a "final" Office Action, as indicated on the "Office Action Summary" of the latest Action, but not otherwise indicated in the body of the third Office Action.

Further, Applicant's Response, which was mailed on April 23, 2003, to the final Office Action resulted in the Examiner withdrawing all prior grounds for rejection. It would, therefore, appear inconsistent with PTO practice to have made the third Office Action of May 21, 2003, "final," and it was concluded by both Applicant's attorney and the Examiner during the interview of May 27, 2003, that the latest Action would be non-final, notwithstanding the indication to the contrary in the "Office Action Summary."

Turning now, in detail, to an analysis of the Examiner's

prior art rejection, in the third Office Action the Examiner has rejected Claims 18-25 and 29-37 (of which Claims 18, 25 and 34 are the pending independent claims) as being anticipated, pursuant to 35 U.S.C. §102(e), by Striefel et al., U.S. Patent No. 6,059,491, on the contention that Striefel et al. discloses a barrier article comprising at least one barrier section having a comparatively narrow upright portion (18) and a comparatively wide base portion (24), which includes a female end (52) and a male end (54), with the male and female ends having corresponding projections and recesses that can be mated together to form a hinge pin receiving aperture. The Examiner has further contended that additional barrier sections, identical to at least the first barrier section (10) are matable with at least one other barrier section, and that a hinge pin (64) is passable between the initial barrier section and the additional, adjacent barrier section, so that the mated barrier sections can be disposed in a rectilinear or curvilinear arrangement, in a gapless orientation, regardless of the angle of articulation existing between such adjacent barrier sections as taught by Striefel et al. The pending dependent claims were rejected as either being anticipated by, obvious over, Striefel et al., considered singularly or in combination with additional prior art.

In reply to the Examiner's anticipation rejection applying Striefel et al., this citation discloses a portable barrier, intended for use on construction sites to either

impound fluids or else to stem the flow of slit, slurry, etc. The portable barrier in Striefel et al. comprises an upright portion and an attached "stablizing" toe (40), and the entire barrier is intended to be comprised of barrier sections which are joined by a hinge pin. There are, however, several major differences between that taught and suggested by the applied prior art of Striefel et al. and that now being claimed by Applicant:

In Striefel et al., the substantially horizontal planar wall (24), which can be viewed as being the wide base portion, does not comprise a nose nor corresponding cavity, as disclosed and claimed by the present Applicant. Further, pending independent Claims 18, 25 and 34 recite that the base portion includes, at a female end of the barrier section, "a nose . . . that is a surface of rotation of a profile of said comparatively wide portion." The lowermost connector in Striefel et al., it is respectfully submitted, clearly does not fulfill this requirement. Additionally, the lowermost connector in the applied art is attached to the "male end (54)," as the prior art has been analogized by the Examiner in his anticipation rejection. In contrast, pending Claim 18, for example, recites that the nose is part of the female end of the barrier section. Similarly, the opposite end of the barrier section does not comprise any feature that could be deemed equivalent to the corresponding cavity as defined in Applicant's claims. Consequently, it is respectfully submit-

ted that Striefel et al. fails to disclose or reasonably suggest the instantly claimed feature of the nose portion and corresponding cavity of the comparatively wider base portion.

Additionally, the Examiner states in his rejection that Striefel et al. discloses a "comparatively wide base portion, including a female (52) and male end (54)." Applicant cannot agree with the Examiner's application of Striefel et al. against the pending claims, since independent Claims 18, 25 and 34 do not recite a comparatively wide base portion with male and female ends. Instead, it is the barrier section, taken as a whole, which comprises male and female ends, not simply the base portion. Further, in Striefel et al., the wing walls (52, 54) extend the entire length of the barrier, which would appear to be contrary to the Examiner's interpretation.

Alternatively, Applicant respectfully submits that elements 52, 54, the wing walls of the Striefel et al. barrier, cannot be considered to be female and male ends, respectively. The wing walls (52, 54) do not cooperate with the corresponding features of adjacent barrier sections. As FIG. 7 of Striefel et al. illustrates, the wing walls are not "ends," as such, but, rather, project longitudinally of the barrier (Striefel et al., Col. 3, lines 14-19), and should therefore not be seen as corresponding to the male and female ends of the presently-claimed invention.

Further, in the first Office Action (at page 3), it is respectfully contended that the Examiner has incorrectly paraphrased the scope of Applicant's independent claims. Claim 18, for example, recites that "said nose being accommodated in said corresponding shaped cavity for preventing any gap between said comparatively wide base portion of said barrier and a comparatively wide base portion of said additional barrier section." In Striefel et al., adjacent barrier sections are connected to one another by connectors situated at the end of each section, rather than as part of the profile of the barrier sections. In addition, the barrier sections in Striefel et al. narrow towards each end, as best shown in FIG. 5 of the applied art. Thus, the adjacent barrier sections are joined at their narrow most point in Striefel et al. This would suggest that there are, in fact, gaps between the "comparatively wide base portions," which is submitted to further distinguish the present invention, as recited most broadly in independent Claim 18, over Striefel et al.

Applicant further contends that a significant amount of modification would be required to the portable barrier of Striefel et al. in order to arrive at that being claimed by Applicant: The base portion in Striefel et al. would have to be altered to provide it with a nose portion, thereby providing it with a surface of rotation. The prior art barrier would further have to be altered to provide a corresponding

cavity, with the cavity and the nose being adapted to fit together during use so that there are no gaps between the two base portions of adjacent barrier sections. This type of alteration would have an effect on the positioning and type of connectors disposed further upward on the barrier sections, and would necessitate additional modifications for enabling the adjacent barrier sections to be fitted together without intervening gaps, e.g., such modifications to the applied art of Striefel et al. would likely result in adjacent barrier sections being unable to be moved about the hinge pins, as so required.

Finally, Applicant cannot agree with the Examiner's interpretation of the prior art that Striefel et al. discloses a barrier with a "corresponding recess having a corresponding surface of rotation." Initially, it is questionable with the ends of the barrier sections taught in Striefel et al. can even be considered to be recesses. Assuming arguendo that the surfaces attached to the wing walls can be considered to be recesses - and Applicant cannot agree with the Examiner's assessment on this point - these surfaces do not provide a "surface of rotation." This can best be seen from FIG. 7 of Striefel et al., which shows that the surface abutting an adjacent connector (60) is planar, and therefore cannot be said to provide a "surface of rotation." Further, even if the vertically aligned bores (59) shown in Striefel et al. might be analogized to "surfaces of rotation," these



surfaces are not surfaces of rotation formed "of" the profile of the Striefel et al. barrier sections, in contrast to that being claimed by Applicant and as now clarified by the amendments currently being entered to Applicant's claims.

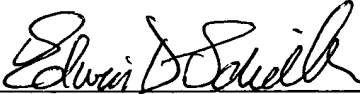
In light of the foregoing, it is respectfully contended that Striefel et al. neither anticipates, nor renders obvious, the present invention, as now being claimed, and, thus, the Examiner's 35 U.S.C. §102(e) anticipation rejection of the third Office Action should therefore be appropriately withdrawn.

In view of the foregoing, it is respectfully contended that all claims now pending in the above-identified patent application (i.e., Claims 18-37) recite a novel and safe modular barrier, comprised of barrier sections that are able to rotate relative to adjacent barrier sections without opening a gap between base portions of said barrier sections, which is patentably distinguishable over the prior art. Accordingly, withdrawal of the outstanding rejection and the

allowance of all claims now pending are respectfully  
requested and earnestly solicited.

Respectfully submitted,

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The Commissioner is hereby authorized to charge the Deposit  
Account of Applicants' Attorney, Account No. 19-0450, for any  
additional fees which may be due in connection with the  
prosecution of the present application, but which have not  
otherwise been provided for.